

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

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No. 232.

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THE UNITED STATES, APPELLANT,

vs.

WILL J. ALLEN.

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APPEAL FROM THE COURT OF CLAIMS

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FILED DECEMBER 22, 1922.

# SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES, APPELLANT,

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1 In the Court of Claims.

WILL J. ALLEN, }  
v. } No. 34,235.  
THE UNITED STATES. }

I. *Petition.*

(Filed December 13, 1919.)

*To the Honorable the Court of Claims:*

The claimant, Will J. Allen, respectfully represents:

I. The claimant enlisted in the United States Revenue Cutter Service, the name of which has since been changed to United States Coast Guard, on September 18, 1913, serving successively as acting ship's writer, ship's writer, acting yeoman, and yeoman, in which last-named grade he received a permanent appointment January 13, 1917, and continued to serve as such until May 28, 1919, when he was honorably discharged from the service.

II. The duties of a yeoman in the Coast Guard are in all respects similar to and corresponding with those of a chief yeoman in the Navy.

III. The claimant since the 6th day of April, 1917, or since the date when the act hereinafter referred to became effective, has been entitled to receive down to the date of his discharge a rate of pay corresponding with and equal to that of a chief yeoman in the Navy.

2 IV. The Commandant of the Coast Guard on the 5th day of June, 1917, by letter officially addressed to the Chief of the Bureau of Navigation of the Navy Department, submitted a tabular statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the United States Coast Guard, and opposite thereto the several corresponding grades and ratings of the Navy, the tabulation being arranged on the basis of the duties and responsibilities of the several ratings.

In this statement a yeoman in the Coast Guard was set down as corresponding in duty to a chief yeoman in the Navy and entitled to the same pay.

In the table adopted by the Navy Department this and other recommendations were ignored and yeomen in the Coast Guard were ranked with yeomen first class in the Navy, thereby giving to all yeomen in the Coast Guard no benefit whatever of the Navy rates of pay, the rate of pay of a yeoman, first class, in the Navy being lower than that of a yeoman in the Coast Guard.

The same is true of the other petty officers of the Coast Guard who were rated as corresponding to petty officers in the Navy receiving lower rates of pay than themselves whereby no effect was given to the provisions of law hereinafter referred to for corresponding rates of pay of petty officers of the Coast Guard to those of corresponding grades or ratings in the Navy.

V. The base pay of a yeoman in the Coast Guard was prior to the 6th day of April, 1917, \$60 a month. The base pay of a chief yeoman, holding a permanent appointment in the Navy, was prior to that date, and still is, \$77, and to each of said rates of pay must be added the credits for previous service in the Coast Guard or Navy, continuous service pay on re-enlistment, and also from June 1, 1917, increase of pay in time of war and for six months thereafter.

VI. The claimant therefore claims pay at the rate allowed by law and regulations to a chief yeoman in the U. S. Navy, from April 6, 1917, to May 28, 1919, wherever higher than that allowed by law and regulations pertaining to the Coast Guard to a yeoman in said Coast Guard, less all payments previously made to him on a different theory of the law.

VII. This claim has not been presented to the accounting officers of the Treasury for the reason that the Comptroller of the Treasury on the 10th day of September, 1919, in a decision in the case of another petty officer held that he would not make an independent re-examination of the corresponding rates of pay between the Coast Guard and the Navy, whereby it became useless to present this claim.

VIII. This claim is based upon the act of May 22, 1917, sec. 15 (40 Stat. 87), providing "that during the continuance of the present war, warrant officers, petty officers, and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

Also that part of sec. 15 of said act which provides for an increase of \$6 a month to all enlisted men in the Navy whose base pay is \$45 or more a month.

Also sec. 13 of the same act (40 Stat. 87): "Nothing contained in this act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this act."

Also joint resolution of April 6, 1917 (40 Stat. 1), declaring a state of war with Germany.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided,

abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims six hundred dollars (\$600).

KING & KING,  
*Attorneys for Claimant.*

DISTRICT OF COLUMBIA, ss:

Will J. Allen, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge, information, and belief.

WILL J. ALLEN.

Subscribed and sworn to before me this 13th day of December, 1919.

[SEAL.]

MAY LOU H. BYINGTON,  
*Notary Public.*

II. *General traverse.*

(Filed Feb. 12, 1920.)

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

III. *Argument and submission of case.*

On April 18, 1921, this case was argued and submitted on merits by Mr. George A. King, for the plaintiff, and by Mr. John G. Ewing, for the defendant.

5 IV. *Findings of fact, conclusion of law, opinion of the court by Hay, J., and dissenting opinion by Graham, J. Entered May 16, 1921.*

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

*Findings of fact.*

I.

The plaintiff, Will J. Allen, enlisted as a ship's writer in the United States Coast Guard September 18, 1913, and reenlisted successively on expiration of each succeeding term of enlistment, September 18, 1914, 1915, and 1916. October 13, 1916, he was rated acting yeoman and January 13, 1917, yeoman. He reenlisted as yeoman September 18, 1917, and was September 13, 1918, honorably discharged for the convenience of the Government. September 14, 1918, he reenlisted as yeoman for the period of the war, not exceeding three

years, and May 29, 1919, was honorably discharged for the convenience of the Government.

## II.

From April 6, 1917, date of declaration of war with Germany, and until the institution of this suit the clerical force of the Coast Guard consisted of ships' writers and yeomen, the yeomen being the higher.

Ship's writers must qualify as stenographers and typewriters before they were enlisted. The duty of a ship's writer was to perform all the clerical work on a ship so far as he was able. He was required to be familiar with making out requisitions, returns of property, pay rolls, and accounts of all kinds, as well as taking down the officers' letters in stenography and typewriting the same.

Ship's writers were generally promoted to the grade of yeoman on showing proper qualifications after a service of three years.

There were but few of the rating of yeoman prior to the declaration of war with Germany.

The plaintiff in this case was a skilled stenographer and typist when he enlisted and throughout his term of service he also possessed the other qualifications above stated.

## 6

## III.

In the Navy there are yeoman, third, second, and first classes, and above them a grade known as chief yeomen.

The yeomen of the third and second classes perform simply minor clerical duties under the supervision of either a chief or a first-class yeoman. After they have reached the rating of first class their responsibilities are increased. The yeoman, first class, acts as the first assistant to the chief yeoman and relieves him of practically all the mechanical work.

Yeomen in the Coast Guard were required to be stenographers in addition to having all the other qualifications required for chief yeomen in the Navy.

The duties of yeomen in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy.

## IV.

Shortly after the passage of the act of May 22, 1917, section 15 of which provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy, the commandant of the Coast Guard submitted June 5, 1917, to the Chief of the Bureau of Navigation of the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the Coast Guard, and stated opposite thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings correspond. These tabular statements were ar-

ranged on the basis of the duties and responsibilities of the several ratings.

In this table a ship's writer was put down as corresponding to a yeoman, first class, in the Navy, and a yeoman in the Coast Guard to a chief yeoman in the Navy.

Thereafter the Secretary of the Navy, October 10, 1917, issued a general order giving the corresponding grades in which both ship's writers and yeomen in the Coast Guard are tabulated as corresponding to yeoman, first class, in the Navy. The tabular statement of corresponding ratings as submitted by the commandant of the Coast Guard was in many other respects changed by the Navy Department.

This action was followed by a circular letter from Coast Guard headquarters, dated January 3, 1918, carrying out the order of the Secretary of the Navy, and showing, among other things, the comparative rates of pay for petty officers of the Coast Guard and for those of the Navy to whom the Navy Department general order of October 10, 1917, aforesaid, had declared such petty officers to correspond.

According to this statement the pay of all petty officers and nearly all enlisted men in the Coast Guard was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917.

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## V.

Under the act of May 18, 1920, section 8, providing that the grades and ratings of warrant officers, chief petty officers, petty officers, etc., in the Coast Guard shall be the same as in the Navy, etc., it was provided by an order issued from Coast Guard headquarters bearing the same date as the act:

"Petty officers and other enlisted persons are transferred as of ----- from the ratings they held under the old classification of ratings and are hereby permanently appointed to the ratings provided in the new classifications, as follows:

"Yeoman: With three years' total service or more as yeoman and ship's writer, to be chief yeoman.

"Yeoman: With less than three years' total service as yeoman and ship's writer, to be yeoman, first class.

"Ship's writers: With less than three years' total service, to be yeoman, first class."

## VI.

The plaintiff during the time covered by this claim, which comes down to May 28, 1919, was paid at the rate of pay due at the old Coast Guard rates of pay to a yeoman in the Coast Guard, that pay being higher than that of a yeoman, first class, in the Navy, which was held by the Navy Department, as aforesaid, to be the corresponding rating.



If paid during the period from April 6, 1917, date of declaration of war, to May 28, 1919, as a chief yeoman in the Navy he would receive ----- \$2,270.12

The total pay received by him during that period was---- 1,783.80

Difference ----- 486.32

If paid from June 1, 1917, to May 28, 1919, as a chief yeoman in the Navy, he would receive----- 2,128.95

The total pay received by him during that period was---- 1,673.80

Difference ----- 455.15

### *Conclusion of law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred and eighty-six dollars and thirty-two cents (\$486.32).

### *Opinion.*

*Hay, Judge, delivered the opinion of the court:*

The plaintiff brings this suit to recover the sum of \$486.32, which he claims to be due him by virtue of the act of Congress approved May 22, 1917, 40 Stat. 84.

The plaintiff enlisted as a ship's writer in the United States Coast Guard on September 18, 1913, and on January 13, 1917, he was rated as a yeoman in the Coast Guard, and was serving as such on April 6, 1917, when war with Germany was declared and on May 22, 1917, when the act above cited was passed. On September 14, 1918, he reenlisted in the Coast Guard as yeoman, and was honorably discharged on May 29, 1919.

The duties of yeoman in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy.

By the act of January 28, 1915, 38 Stat. 800, it was provided that in time of war the Coast Guard should operate as a part of the Navy, subject to the orders of the Secretary of the Navy.

Shortly after the passage of the act of May 22, 1917, the commandant of the Coast Guard submitted to the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the Coast Guard, and stated opposite thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings corresponded. These tabular statements were arranged on the basis of the duties and responsibilities of the several ratings. In this statement a yeoman in the Coast Guard was put down as corresponding to a chief yeoman in the Navy.

In the Navy there are yeomen of the first, second, and third class, but no yeomen. There are no chief yeomen in the Coast Guard, but there are chief yeomen in the Navy, and, as pointed out above, the duties of chief yeomen in the Navy corresponded in all respects to the duties of yeomen in the Coast Guard. On October 10, 1917, the Secretary of the Navy issued a general order which provided that a yeoman in the Coast Guard should correspond in rating with a yeoman, first class, in the Navy. The duties of a yeoman, first class, in the Navy do not correspond with the duties of a yeoman in the Coast Guard, his duties and responsibilities being of lesser character than those of yeoman in the Coast Guard. By virtue of the order of the Secretary of the Navy the plaintiff was paid as yeoman of the first class in the Navy, which pay was lower than the pay of a yeoman in the Coast Guard, but by another provision of the act of May 22, 1917, it was provided that nothing contained in the act shall operate to reduce the pay or allowances that would have been received by any person in the \* \* \* Coast Guard except for the passage of the act (40 Stat. 87), and in that way the plaintiff continued to receive the pay of a yeoman in the Coast Guard, but by virtue of the order of the Secretary of the Navy the plaintiff was deprived of the benefit of the act of May 22, 1917, which he claims entitled him to receive the pay of chief yeoman in the Navy.

That part of the act of May 22, 1917, which relates to the pay of officers of the Coast Guard is as follows:

"That during the continuance of the present war, warrant officers, petty officers, and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

The object of Congress in passing the above law was to fix the pay of warrant officers, petty officers, and enlisted men of the Coast Guard during the continuance of the war with Germany, and to fix it so that these officers and enlisted men should receive the same pay as was prescribed for corresponding grades and ratings in the Navy. The officers of the Coast Guard were to be placed on an equal footing with the officers of the Navy, and were to derive any benefits which might accrue to them by reason of the fact that they were discharging the same duties and were incurring the same responsibilities which naval officers of similar rank were discharging and incurring.

The question for determination is: Does the fact that a yeoman of the Coast Guard performs the same duties, incurs the same responsibilities, and possesses the same qualifications in the Coast Guard Service which a chief yeoman in the Navy performs, incurs and possesses, entitle a yeoman in the Coast Guard to receive under the statute above quoted the same pay as a chief yeoman in the Navy?

In arriving at the proper rate of pay must the court base its decision upon the correspondence of names in the two services, or

must it base its decision upon the correspondence of the duties and qualifications of the officers in the two services? It will be observed that there were no yeoman in the Navy and no chief yeoman in the Coast Guard, but the duties and qualifications of the two offices were identical. The question is not one of office, but is purely a question of pay.

This court and the Supreme Court of the United States have placed a construction upon the statutes dealing with questions of corresponding pay in the Army and Navy; and it has been held that not corresponding grades but that the corresponding duties performed and the corresponding qualifications possessed must be considered in deciding whether an officer was entitled to the pay claimed for performing similar duty in the Navy for which pay had been fixed in the Army. The act known as the Navy personnel act (30 Stat. 1007) provided that after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. There were in the Navy certain ranks or grades which did not correspond in name with ranks or grades in the Army, and the court in determining what was the pay to which the officer in the Navy was entitled arrived at a conclusion by ascertaining the duties which were performed by the officers in the respective services. This court said: "It is not for the courts to add to or take from the act where the pay for a similar service rendered by a naval officer can be assimilated to that of an officer of corresponding rank in the Army." *Crosley v. United States*, 38 C. C. 82, 86. See also *United States v. Crosley*, 196 U. S. 327; *Richardson v. United States*, 38 C. C. 182; *Plummer v. United States*, 224 U. S. 137; *United States v. Farenholt*, 206 U. S. 226; *United States v. Miller*, 208 U. S. 32, 36.

The statute (act of May 22, 1917) was passed by Congress for the purpose of equalizing as far as possible the pay of officers of the Coast Guard with that of officers of the Navy. The act attempted to assimilate the pay, and the court in construing the act will, so far as conditions admit, put such a construction upon it as will carry out the intent of Congress. In the case at bar a Coast Guard officer renders similar service to that rendered by a naval officer, has the same duties to perform, and possesses the same qualifications; the pay of the Coast Guard officer can be assimilated to the pay of the officer of the Navy, and therefore we think that the plaintiff is entitled to receive the pay prescribed for chief yeoman in the Navy.

The defendant, however, contends that by virtue of the act of January 28, 1915, 38 Stat., 800, which provides that in time of war the Coast Guard Service shall be a part of the Navy, subject to the orders of the Secretary of the Navy, the Secretary of the Navy had the right to prescribe the grades and ratings of the Coast Guard Service, and that such grades and ratings prescribed by the Secretary must be taken as final by the court, and that the pay thus

fixed by the Secretary of the Navy can not be inquired into nor considered by the courts. Section 161, Revised Statutes, is relied upon by the defendant.

This court has repeatedly passed upon the effect of regulations of the executive departments. It has uniformly held that such regulations could only have the force and effect of law when they are not in contravention to existing law and when they are promulgated for the purpose of carrying into effect the law in respect to which they are promulgated.

The general purpose of the proviso under consideration was to establish uniformity in the pay of like officers in the Coast Guard and the Navy. It fixed the pay of those officers, and nowhere in the act of May 22, 1917, or in the act of January 28, 1915, is anything to be found which delegates to the Secretary of the Navy the right to fix the pay of these officers. By assuming to fix the pay of officers of the Coast Guard the Secretary undertakes to exercise legislative power by regulation, and in this case to defeat by his interpretation of the statute the purpose and intent of Congress, for the intent of Congress was to benefit the officers of the Coast Guard by giving them the pay of like officers in the Navy. This the regulation of the Secretary prevented. *Glavey v. United States*, 182 U. S. 595, 605; *United States v. Symonds*, 120 U. S. 46, 49; *Illinois Central Railroad Co. v. United States*, 52 C. C. 53, 57.

As to the time when the proviso fixing the pay of officers, etc., of the Coast Guard takes effect we are of opinion that it takes effect from the beginning of the war, April 6, 1917. The intent of Congress was to give these officers of the Coast Guard during the war the same pay as like officers in the Navy, and in order to carry out this purpose these officers must be paid from the beginning of the war.

For the foregoing reasons we are of opinion that the plaintiff is entitled to recover the sum of \$486.32. It is so ordered.

Downey, Judge, and Booth, Judge, concur.

Campbell, Chief Justice, took no part in the decision in this case.

*Graham, Judge, dissenting.*

I am constrained to dissent from the opinion of the court in this case. As I see it, it involves a purely administrative question, properly and naturally within the decision of the Secretary of the Navy, and which Congress intended that he should decide.

That question is in this case whether the duties of a yeoman in the Coast Guard, which was a part of the Navy Department at the time,

corresponded with the duties of a chief yeoman in the Navy.

11 The Secretary of the Navy held that they did not, but corresponded with the duties of a yeoman, first class, and gave him that rating. The act did not automatically fix the pay. It made the pay dependent upon the decision of the preliminary question of the correspondence of duties, that is, ratings, between the petty officers in the Coast Guard and the petty officers in the Navy. It left this question open, to be decided by some person, or body. That Congress thought it was an administrative question is shown by the

fact that in the subsequent act of May 18, 1920, 41 Stat. 603, it apparently left this same question to be determined by the Secretary of the Treasury, under whose jurisdiction the Coast Guard was at that time and who prepared and issued General Order No. 43, which was necessary to carry the provision of the act into effect. At the time of the passage of the act here in question the country was at war, and under the statute creating it the Coast Guard was under the jurisdiction of the Navy Department. The Secretary of the Navy as well as the chief officer of the Coast Guard thought this was a question to be determined by the Secretary of the Navy, showing an executive construction of the act which is, at least, persuasive. It was, as I view it, an administrative act which Congress intended should be determined by the head of the department, under whose control the two branches of the service were, and who was responsible for the efficiency and discipline of each and both. The decision of the question was reposed in the Secretary of the Navy. It involved the exercise of discretion and judgment, which is not reviewable by this court.

In this case it will be seen that it was necessary for a court first to pass upon and find the fact that the duties of a yeoman in the Coast Guard corresponded with those of a chief yeoman in the Navy, and thereby overrule the order of the Secretary of the Navy and his executive construction of the act, before it could reach a decision of the case in favor of the plaintiff. The case of *Crosley v. United States*, 196 U. S., and the other cases cited in the opinion of the court I do not think are in point. No one of them involves the question of an administrative order of a department. The questions are interdepartmental and not intradepartmental, as in this case. They involve rulings of the accounting officers of the Government.

I am of the opinion that this court has no jurisdiction, and to assume jurisdiction would be an unwarranted interference with the functions of the executive branch of the Government and an attempt to regulate the internal affairs of a department, which is no part of the functions of the judiciary.

While the opinion of the court seems to assume that this act was passed only for the benefit of the officers of the Coast Guard, it is not an interpretation of the act with which I can agree. That it was not passed for the purpose of benefiting them as a body is conclusively shown by the ratings prepared by the Chief of the Coast Guard—whose view of the matter has been adopted by the court—by which rating the pay of 8 out of the 25 petty officers would have been raised and the greater portion of the other 17 lowered, and the latter were only saved from this loss of pay by the provision of the act that it should not operate to decrease compensation.

Congress is presumed to have known and understood that this would be the effect of the act, and it must be construed in the light of this effect. It is to be borne in mind that, generally speaking, the pay of the officers of the Coast Guard before the passage of the act was relatively higher than for similar duties and work in the Navy. The portion of the act upon which the

decision is based is a proviso to a paragraph increasing the pay of certain petty officers and enlisted men in the Navy. Knowing that the Coast Guard was under the Navy Department, and in order to avoid the discrimination between the petty officers in it and those in the Navy performing relatively similar duties, this proviso was inserted to avoid dissatisfaction, which might affect efficiency and discipline, by providing for the equalization and uniform classification of the men in these two branches of the naval service. Its purpose was to secure uniform classification and was consequently a classification question. Being a classification question, it is peculiarly an administrative question with which the head of the Navy Department, of all persons, Congress knew would be the best qualified to deal. Undoubtedly he took this view of it in deciding it and thus gave the act an administrative construction which should be persuasive here. If Congress entrusted the decision to him, this court has no jurisdiction to overrule his judgment and discretion in the matter. Whether the Secretary decided the matter right is not for the decision of this court.

The opinion in this case is based upon the view that the Secretary of the Navy usurped his authority in deciding the question of fact here involved, and consequently that he had no authority to decide it. If he had no authority to decide it and issue the order fixing the rating of the men in these two branches of the service, and had not decided it, then the plaintiff could not have compelled him to decide it by mandamus proceedings. If he had not decided it, or had refused to decide it, the plaintiff's rating and consequent rate of pay would have remained undetermined. That is, the amount of his pay would not have been fixed, for the statute did not automatically fix it. It could not be fixed until the question was determined whether he should be rated as a chief yeoman or a yeoman of the first class in the Navy. It therefore appears that had the Secretary failed to enter the order fixing the rating and the plaintiff had come into this court and asked for action, he would have been asking this court to fix his pay by first deciding the question of what his rating should be. As stated, this court has no authority to fix the pay; that is a matter for Congress. Where Congress has fixed the amount of compensation this court can enforce its payment, but it has no power to fix compensation directly or indirectly. That is to say, where the compensation is dependent upon the decision of a fact aliunde the statute, this court by deciding that fact can not fix the compensation indirectly, which, as I view the case, is what the court is asked to do here.

If this conclusion, based upon the assumption that the Secretary of the Navy could not decide the question, be correct, then the act is inoperative because Congress failed to state, in terms, that the Secretary of the Navy should decide the question and determine the rating. This, I think, is a conclusion not justified. Rather than take this view of the matter I think that it should be concluded that as it was an administrative question Congress intended it to be decided by the Secretary of the Navy.

I am of the opinion that the petition should have been dismissed upon the ground that the court in no aspect of the matter had jurisdiction.

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*V. Judgment of the court.*

At a Court of Claims held in the city of Washington on the sixteenth day of May, A. D., 1921, judgment was ordered to be entered, as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that Will J. Allen, as aforesaid, is entitled to recover, and shall have and recover of and from the United States the sum of four hundred and eighty-six dollars and thirty-two cents (\$486.32).

BY THE COURT.

*VI. Proceedings after entry of judgment.*

On July 15, 1921, the defendant filed a motion for a new trial. Said motion was overruled by the court on October 10, 1921.

*VII. Defendant's application for and allowance of appeal to the Supreme Court.*

From the judgment rendered in the above-entitled cause on the 10th day of October, 1921, in favor of the claimant, the defendants, by their Attorney General, on the 21st day of November, 1921, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,

*Assistant Attorney General.*

Filed November 21, 1921.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

November 21, 1921.

14

Court of Claims.

WILL J. ALLEN,	}	No. 34235.
vs.		
THE UNITED STATES.		

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law filed by the court; of the opinion of the court by Hay, J., and of the dissenting opinion by Graham, J.; of the judgment of the court; of the defendant's application for and



the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this twenty-sixth day of November, A. D. 1921.

[SEAL.]

F. C. KLEINSCHMIDT,  
*Assistant Clerk Court of Claims.*

(Indorsement on cover:) File No. 28615. Court of Claims. Term No. 232. The United States, appellant, vs. Will J. Allen. Filed December 23d, 1921. File No. 28615.